

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:07-CT-3153-FL

FILED
JAN 02 2008
DENNIS J. ARNONE, CLERK
US DISTRICT COURT, EDNC
BY DEP CLK

Roger Blakeney, Nathan Bowie, Richard Cagle,)
Eric Call, Wade Cole, Daniel Cummings,)
Johnny Daughtry, Phillip Davis, Danny Frogge,)
Tilmon Golphin, Warren Gregory, Jerry Dale)
Hill, Johnny Hyde, Thomas Larry, Jimmie)
Lawrence, David Lynch, John McNeil,)
Jeffery Meyer, Carl Moseley, Errol Moses,)
Nasir Al-Din Saddiq, and Darrell Strickland,)

Plaintiffs,)

v.)

ORDER

THEODIS BECK, Secretary, North Carolina)
Department of Correction; GERALD)
BRANKER, Warden Central Prison,)
Raleigh, North Carolina; and UNKNOWN)
EXECUTIONERS, individually and in their)
official capacity,)

Defendants.)

On November 21, 2007, plaintiffs, all North Carolina inmates convicted of first-degree murder and sentenced to death, filed an action pursuant to 42 U.S.C. § 1983. The matter is presently before the court for a frivolity review. See 28 U.S.C. § 1915A.

Section 1915A provides that courts shall conduct an initial review of a complaint filed by a prisoner in a civil action in which the prisoner seeks relief from a government entity or an officer or employee of the government. On initial review, the court shall dismiss the complaint, or any claims therein, if it is frivolous or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b). A claim is frivolous where it "lacks an arguable basis either in law or in fact." Nietzke

v. Williams, 490 U.S. 319, 325 (1989).

In the complaint, plaintiffs assert that the State's execution protocol, if used, will violate their right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments, deprive plaintiffs of their rights to equal protection of the laws under the Fourteenth Amendment, and deny them freedom of speech under the First and Fourteenth Amendments. Plaintiffs seek preliminary and permanent injunctive relief barring the State from carrying out their executions using the inadequate protocol.

Plaintiffs' claims are not clearly frivolous and are allowed to proceed. The Clerk is DIRECTED to maintain management of the case.

SO ORDERED, this 20 day of December 2007



LOUISE W. FLANAGAN
Chief United States District Judge